

SECOND REGULAR SESSION

# SENATE BILL NO. 836

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 10, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3537S.02I

## AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to child support.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 452.340, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 452.340, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation  
2 or child support, the court may order either or both parents owing a duty of  
3 support to a child of the marriage to pay an amount reasonable or necessary for  
4 the support of the child, including an award retroactive to the date of filing the  
5 petition, without regard to marital misconduct, after considering all relevant  
6 factors including:

7 (1) The financial needs and resources of the child;

8 (2) The financial resources and needs of the parents;

9 (3) The standard of living the child would have enjoyed had the marriage  
10 not been dissolved;

11 (4) The physical and emotional condition of the child, and the child's  
12 educational needs;

13 (5) The child's physical and legal custody arrangements, including the  
14 amount of time the child spends with each parent and the reasonable expenses  
15 associated with the custody or visitation arrangements; and

16 (6) The reasonable work-related child care expenses of each parent.

17 2. The obligation of the parent ordered to make support payments shall  
18 abate, in whole or in part, for such periods of time in excess of thirty consecutive  
19 days that the other parent has voluntarily relinquished physical custody of a  
20 child to the parent ordered to pay child support, notwithstanding any periods of

21 visitation or temporary physical and legal or physical or legal custody pursuant  
22 to a judgment of dissolution or legal separation or any modification thereof. In  
23 a IV-D case, the division of child support enforcement may determine the amount  
24 of the abatement pursuant to this subsection for any child support order and  
25 shall record the amount of abatement in the automated child support system  
26 record established pursuant to chapter 454, RSMo. If the case is not a IV-D case  
27 and upon court order, the circuit clerk shall record the amount of abatement in  
28 the automated child support system record established in chapter 454, RSMo.

29 3. Unless the circumstances of the child manifestly dictate otherwise and  
30 the court specifically so provides, the obligation of a parent to make child support  
31 payments shall terminate when the child:

32 (1) Dies;

33 (2) Marries;

34 (3) Enters active duty in the military;

35 (4) Becomes self-supporting, provided that the custodial parent has  
36 relinquished the child from parental control by express or implied consent;

37 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this  
38 section apply; or

39 (6) Reaches age twenty-two, unless the provisions of the child support  
40 order specifically extend the parental support order past the child's twenty-second  
41 birthday for reasons provided by subsection 4 of this section, **or unless the**  
42 **provisions of subsection 5 of this section apply.**

43 4. If the child is physically or mentally incapacitated from supporting  
44 himself and insolvent and unmarried, the court may extend the parental support  
45 obligation past the child's eighteenth birthday.

46 5. If when a child reaches age eighteen, the child is enrolled in and  
47 attending a secondary school program of instruction, the parental support  
48 obligation shall continue, if the child continues to attend and progresses toward  
49 completion of said program, until the child completes such program or reaches  
50 age twenty-one, whichever first occurs. If the child is enrolled in an institution  
51 of vocational or higher education not later than October first following graduation  
52 from a secondary school or completion of a graduation equivalence degree  
53 program and so long as the child enrolls for and completes at least twelve hours  
54 of credit each semester, not including the summer semester, at an institution of  
55 vocational or higher education and achieves grades sufficient to reenroll at such  
56 institution, the parental support obligation shall continue until the child

57 completes his or her education, or until the child reaches the age of twenty-two,  
58 whichever first occurs. **Once the child turns twenty-two years of age, if he**  
59 **or she has achieved and continues to maintain a cumulative grade**  
60 **point average of at least 3.0 or the equivalent at an institution of**  
61 **vocational or higher education, excluding any post-baccalaureate**  
62 **studies, the parental support obligation shall continue until the child**  
63 **completes such program or reaches age twenty-four, whichever occurs**  
64 **first.** To remain eligible for such continued parental support, at the beginning  
65 of each semester the child shall submit to each parent a transcript or similar  
66 official document provided by the institution of vocational or higher education  
67 which includes the courses the child is enrolled in and has completed for each  
68 term, the grades and credits received for each such course, and an official  
69 document from the institution listing the courses which the child is enrolled in  
70 for the upcoming term and the number of credits for each such course. If the  
71 circumstances of the child manifestly dictate, the court may waive the October  
72 first deadline for enrollment required by this subsection. If the child has pursued  
73 a path of continuous attendance and has demonstrated evidence of a plan to  
74 continue to do so, the court may enter a judgment abating support for a period  
75 of up to five months for any semester in which the child completes at least six but  
76 less than twelve credit hours; however, such five-month period of abatement shall  
77 only be granted one time for each child. If the child is enrolled in such an  
78 institution, the child or parent obligated to pay support may petition the court to  
79 amend the order to direct the obligated parent to make the payments directly to  
80 the child. As used in this section, an "institution of vocational education" means  
81 any postsecondary training or schooling for which the student is assessed a fee  
82 and attends classes regularly. "Higher education" means any junior college,  
83 community college, college, or university at which the child attends classes  
84 regularly. A child who has been diagnosed with a learning disability, or whose  
85 physical disability or diagnosed health problem limits the child's ability to carry  
86 the number of credit hours prescribed in this subsection, shall remain eligible for  
87 child support so long as such child is enrolled in and attending an institution of  
88 vocational or higher education, and the child continues to meet the other  
89 requirements of this subsection. A child who is employed at least fifteen hours  
90 per week during the semester may take as few as nine credit hours per semester  
91 and remain eligible for child support so long as all other requirements of this  
92 subsection are complied with.

93           6. The court shall consider ordering a parent to waive the right to claim  
94 the tax dependency exemption for a child enrolled in an institution of vocational  
95 or higher education in favor of the other parent if the application of state and  
96 federal tax laws and eligibility for financial aid will make an award of the  
97 exemption to the other parent appropriate.

98           7. The general assembly finds and declares that it is the public policy of  
99 this state that frequent, continuing and meaningful contact with both parents  
100 after the parents have separated or dissolved their marriage is in the best  
101 interest of the child except for cases where the court specifically finds that such  
102 contact is not in the best interest of the child. In order to effectuate this public  
103 policy, a court with jurisdiction shall enforce visitation, custody and child support  
104 orders in the same manner. A court with jurisdiction may abate, in whole or in  
105 part, any past or future obligation of support and may transfer the physical and  
106 legal or physical or legal custody of one or more children if it finds that a parent  
107 has, without good cause, failed to provide visitation or physical and legal or  
108 physical or legal custody to the other parent pursuant to the terms of a judgment  
109 of dissolution, legal separation or modifications thereof. The court shall also  
110 award, if requested and for good cause shown, reasonable expenses, attorney's  
111 fees and court costs incurred by the prevailing party.

112           8. The Missouri supreme court shall have in effect a rule establishing  
113 guidelines by which any award of child support shall be made in any judicial or  
114 administrative proceeding. Said guidelines shall contain specific, descriptive and  
115 numeric criteria which will result in a computation of the support obligation. The  
116 guidelines shall address how the amount of child support shall be calculated  
117 when an award of joint physical custody results in the child or children spending  
118 substantially equal time with both parents. Not later than October 1, 1998, the  
119 Missouri supreme court shall publish child support guidelines and specifically list  
120 and explain the relevant factors and assumptions that were used to calculate the  
121 child support guidelines. Any rule made pursuant to this subsection shall be  
122 reviewed by the promulgating body not less than once every four years to ensure  
123 that its application results in the determination of appropriate child support  
124 award amounts.

125           9. There shall be a rebuttable presumption, in any judicial or  
126 administrative proceeding for the award of child support, that the amount of the  
127 award which would result from the application of the guidelines established  
128 pursuant to subsection 8 of this section is the correct amount of child support to

129 be awarded. A written finding or specific finding on the record in a judicial or  
130 administrative proceeding that the application of the guidelines would be unjust  
131 or inappropriate in a particular case, after considering all relevant factors,  
132 including the factors set out in subsection 1 of this section, is required if  
133 requested by a party and shall be sufficient to rebut the presumption in the  
134 case. The written finding or specific finding on the record shall detail the specific  
135 relevant factors that required a deviation from the application of the guidelines.

136       10. Pursuant to this or any other chapter, when a court determines the  
137 amount owed by a parent for support provided to a child by another person, other  
138 than a parent, prior to the date of filing of a petition requesting support, or when  
139 the director of the division of child support enforcement establishes the amount  
140 of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465,  
141 RSMo, the court or director shall use the guidelines established pursuant to  
142 subsection 8 of this section. The amount of child support resulting from the  
143 application of the guidelines shall be applied retroactively for a period prior to  
144 the establishment of a support order and the length of the period of retroactivity  
145 shall be left to the discretion of the court or director. There shall be a rebuttable  
146 presumption that the amount resulting from application of the guidelines under  
147 subsection 8 of this section constitutes the amount owed by the parent for the  
148 period prior to the date of the filing of the petition for support or the period for  
149 which state debt is being established. In applying the guidelines to determine a  
150 retroactive support amount, when information as to average monthly income is  
151 available, the court or director may use the average monthly income of the  
152 noncustodial parent, as averaged over the period of retroactivity, in determining  
153 the amount of presumed child support owed for the period of retroactivity. The  
154 court or director may enter a different amount in a particular case upon finding,  
155 after consideration of all relevant factors, including the factors set out in  
156 subsection 1 of this section, that there is sufficient cause to rebut the presumed  
157 amount.

158       11. The obligation of a parent to make child support payments may be  
159 terminated as follows:

160       (1) Provided that the child support order contains the child's date of birth,  
161 the obligation shall be deemed terminated without further judicial or  
162 administrative process when the child reaches age twenty-two if the child support  
163 order does not specifically require payment of child support beyond age  
164 twenty-two for reasons provided by subsection 4 of this section;

165           (2) The obligation shall be deemed terminated without further judicial or  
166 administrative process when the parent receiving child support furnishes a sworn  
167 statement or affidavit notifying the obligor parent of the child's emancipation in  
168 accordance with the requirements of subsection 4 of section 452.370, and a copy  
169 of such sworn statement or affidavit is filed with the court which entered the  
170 order establishing the child support obligation, or the division of child support  
171 enforcement;

172           (3) The obligation shall be deemed terminated without further judicial or  
173 administrative process when the parent paying child support files a sworn  
174 statement or affidavit with the court which entered the order establishing the  
175 child support obligation, or the division of child support enforcement, stating that  
176 the child is emancipated and reciting the factual basis for such statement; which  
177 statement or affidavit is served by the court or division on the child support  
178 obligee; and which is either acknowledged and affirmed by the child support  
179 obligee in writing, or which is not responded to in writing within thirty days of  
180 receipt by the child support obligee;

181           (4) The obligation shall be terminated as provided by this subdivision by  
182 the court which entered the order establishing the child support obligation, or the  
183 division of child support enforcement, when the parent paying child support files  
184 a sworn statement or affidavit with the court which entered the order  
185 establishing the child support obligation, or the division of child support  
186 enforcement, stating that the child is emancipated and reciting the factual basis  
187 for such statement; and which statement or affidavit is served by the court or  
188 division on the child support obligee. If the obligee denies the statement or  
189 affidavit, the court or division shall thereupon treat the sworn statement or  
190 affidavit as a motion to modify the support obligation pursuant to section 452.370  
191 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion  
192 as provided by law; provided that the court may require the payment of a deposit  
193 as security for court costs and any accrued court costs, as provided by law, in  
194 relation to such motion to modify.

195           12. The court may enter a judgment terminating child support pursuant  
196 to subdivisions (1) to (3) of subsection 11 of this section without necessity of a  
197 court appearance by either party. The clerk of the court shall mail a copy of a  
198 judgment terminating child support entered pursuant to subsection 11 of this  
199 section on both the obligor and obligee parents. The supreme court may  
200 promulgate uniform forms for sworn statements and affidavits to terminate

201 orders of child support obligations for use pursuant to subsection 11 of this  
202 section and subsection 4 of section 452.370.

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